

classified in class 435, subclass 6.

The Examiner alleges that the restriction is required as the inventions are distinct, each from the other. In particular, the Examiner alleges that:

Inventions of Groups I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP 806.05(h). In the instant case the nucleic acid molecule, cells and *C. elegans* can be used in a process of expressing and isolating any desired recombinant protein using the recited promoter.

Applicants respectfully traverse the Examiner's Restriction Requirement.

For a Restriction Requirement to be proper, "there are two criteria for restriction among patentably distinct inventions: (1) The inventions must be independent...or distinct as claimed...and (2) There must be a serious burden on the examiner if restriction is not required." (MPEP §803).

According to the interpretation provided in MPEP §802.01, the term "independent" means that "there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect...". The term "distinct" is defined in MPEP §801.02 as meaning that "two or more subjects as disclosed are related... but are capable of separate manufacture, use or sale as claimed, and ARE PATENTABLE (novel and unobvious) OVER EACH OTHER..." The above-cited language of 35 USC §121 is clear in that the requirement to restrict an application to one of the inventions disclosed therein is proper only if the disclosed inventions are both independent and distinct. While Applicants take no position on the patentable distinctness of Groups I and II, Applicants submit that the claims of Group I and II are not independent and are so linked as to form a single general inventive concept. In particular, Claim 26 of Group II, which is drawn to the method of identifying a modulating compound, shares a special technical feature, the nucleic acid sequence of Claim 1, with Group I (Claim 1-25).

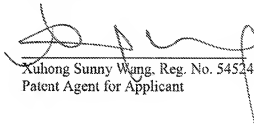
Moreover, Applicants submit that the inventions of Groups I and II do not impose a serious search burden on the Examiner. Specifically, a search for the claimed sequence of

Group I is bound to reveal information concerning its process of use. Accordingly, performing the search covering the sequence, its process of use would not be a serious burden on the Examiner. Therefore, Applicants maintain that the claims should be examined together.

To comply with the Restriction Requirement, Applicants provisionally elect, with traverse, Group I (Claims 1-25). Applicants affirm that Group II, which is drawn to a method of identifying a modulating compound, should be subject for rejoinder if Group I is allowable. Applicants affirm their right to file one or more divisional applications with respect to any of the non-elected subject matter. In view of the aforesaid, Applicants respectfully request the reconsideration and withdrawal of the Restriction Requirement.

The Commissioner is authorized to charge the proper fee or any additional fee or credit any overpayment necessitated by this response to Deposit Account No. 18-1982.

Respectfully submitted,



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